

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MAXELL LTD.,

Plaintiff,

v.

APPLE INC,

Defendant.

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CIVIL ACTION NO. 5:19-CV-00036-RWS

JOINT SUPPLEMENTAL PROTECTIVE ORDER

This Joint Supplemental Protective Order is in supplementation to the parties' previous Agreed Protective Order. Docket No. 45. The Parties anticipate disclosure of confidential information belonging to Intel Corporation ("Intel"), a non-party to the action, and have agreed to these supplemental provisions. Accordingly, it is hereby **ORDERED**:

A. Scope

1. This Supplemental Protective Order sets forth additional restrictions governing the disclosure of Protected Material that constitutes or includes confidential or proprietary information or trade secrets of Intel ("Intel Protected Material").

2. Except as supplemented or amended herein, the provisions of the Protective Order will apply to Intel Protected Material. In the event of a conflict between the Protective Order and this Supplemental Protective Order, the terms of this Supplemental Protective Order will govern.

3. Except as expressly stated otherwise, all terms used in this Supplemental Protective Order have the same meaning as used in the Protective Order.

B. Designation of Intel Protected Material

4. In supplementation to Paragraph 7 of the Protective Order:

(a) A producing Party must designate Intel Protected Material as “INTEL CONFIDENTIAL,” “INTEL CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “INTEL CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE.” The respective protections provided in the Protective Order for materials designated “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” shall apply, as amended by this Supplemental Protective Order to Intel Protected Material.

(b) Any portion of a transcript relating to Intel Protected Material shall be deemed “INTEL CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE.” If a Party desires to modify that classification, it must provide a copy of the relevant portion of the transcript to Intel. Paragraph 13 of the Protective Order will govern any such requests.

C. Additional Restrictions Concerning the Handling of Intel Source Code

5. Where Intel is not the Producing Party, any request by a Receiving Party for printouts of Intel Source Code pursuant to Paragraph 11(c)(v) of the Protective Order, must be forwarded to Intel. On receipt of such request, Intel shall then have the rights of a “Producing Party” under that paragraph to object to the request.

6. The printed copy sets of Intel Source Code must be kept at all times in the offices of Outside Counsel of the Receiving Party. They are prohibited from being kept, stored, or reviewed at the offices of the Receiving Party’s outside consultants or experts. On request by a Receiving Party, Intel will work with the Receiving Party to identify one or more offices of Intel’s outside counsel that could host printed copy sets for review by the outside consultants or experts.

7. Items designated as INTEL CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE may be transported only by hand by a person authorized to have access under Paragraph 10 of the Protective Order. If an authorized person is taking that material on a flight, it must be carried on the plane and may not be checked. Intel Source Code Material may not be shipped by courier, such as Federal Express.

D. Prosecution and Development Bars.

8. With regard to persons who receive items designated “INTEL

CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "INTEL CONFIDENTIAL - ATTORNEYS' EYES' ONLY SOURCE CODE," the subject matter of the prosecution bar in Paragraph 6(b)(i) and (ii) of the Protective Order shall be "technology directed to 3G and 4G wireless modem protocol software and hardware for mobile handset."

9. The final sentence of Paragraph 6(b) will not apply to items designated "INTEL CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "INTEL CONFIDENTIAL - ATTORNEYS' EYES' ONLY SOURCE CODE." Instead, for persons who receive such items, the prosecution bar will apply to patents, patent applications, specifications, and claims that claim priority prior to one year after the earlier of (a) the final resolution of this action, including all appeals and (b) the date on which Intel receives written notice that the person is withdrawing from the Protective Order and the Supplemental Protective Order and will no longer have access to any material designated "INTEL CONFIDENTIAL - ATTORNEYS' EYES ONLY," or "INTEL CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY SOURCE CODE," as well as any materials that contain or disclose Intel Source Code Material.

10. Before receiving items "INTEL CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "INTEL CONFIDENTIAL - ATTORNEYS' EYES' ONLY SOURCE CODE," an outside consultant or expert or Shadow Juror must execute and deliver to Intel the "Certification of Outside Consultant" attached as Exhibit A agreeing not to perform hardware, software or product development work for commercial purposes on 3G and 4G wireless modem protocol software and hardware for mobile handset until one year after the earlier of (a) the final resolution of this action, including all appeals and (b) the date on which Intel receives written notice that the person is withdrawing from the Protective Order and the Supplemental Protective Order and will no longer have access to any material designated "INTEL CONFIDENTIAL - ATTORNEYS' EYES ONLY," or "INTEL CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY SOURCE CODE," as well as any materials that contain or disclose Intel Source Code Material.

E. Other Provisions

11. With regard to Intel Protected Material, the following terms shall include Intel even if Intel was not the party that produced that material:

- a. "Producing Party," as used in Paragraph 6(b), 6(e)(iv), 7(d)(ii), 8(b)(ix), 9(b)(ix), 10(b)(viii), 10(c)(viii), 12, 13(b), 15(a), 18(a), and 19(b) of the Protective Order.
- b. "the producing Party," as used in Paragraph 6(c) of the Protective Order.

- c. “the Party,” as used in Paragraph 8(b)(iii), 9(b)(i), 9(b)(ii), 9(b)(vii), 10(b)(i), 10(b)(ii), 10(b)(vi), 12(a)(iii), 12(b)(v), and 12(f).
- d. “the Parties,” as used in Paragraph 11(c)(v) and 12(e) of the Protective Order.
- e. “every Party who has produced such Discovery Material,” as used in Paragraph 14(a) of the Protective Order.

12. To the extent that a Receiving Party is authorized under the Protective Order and this Supplemental Protective Order to transport or transmit electronic copies of Intel Designated Material, only the following methods may be used: (1) encrypted email using an encryption tool that has a passphrase of at least 20 characters in length and using at least 128-bit Advanced Encryption Standard (AES) cipher option; (ii) a secure FTP site that implements 256 bit AES encryption over SSL and utilizes access controls, and the files containing the information are encrypted using a key length of at least 20 characters and 256 bit AES encryption and are removed from the Secure FTP site within 3 days; and (iii) hand-delivery, where the data is stored on an encrypted hard-drive using at least AES 128-bit hardware encryption algorithm and a removable hardware key or an RFID secured card.

13. A Receiving Party that wants to file or otherwise submit Intel Designated Material must file the materials under seal and must immediately notify Intel.

So ORDERED and SIGNED this 28th day of October, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

Exhibit A

**CERTIFICATION OF OUTSIDE CONSULTANT
REGARDING PROTECTIVE ORDER**

I, _____, state:

1. I have read the Supplemental Protective Order for Intel Confidential Information and understand and will abide by its terms.
2. I agree not to perform hardware, software or product development work for commercial purposes on 3G and 4G wireless modem protocol software and hardware for mobile handset until one year after the earlier of (a) the final resolution of this action, including all appeals and (b) the date on which Intel receives written notice that I am withdrawing from the Protective Order and the Supplemental Protective Order and will no longer have access to any material designated "INTEL CONFIDENTIAL - ATTORNEYS' EYES ONLY," or "INTEL CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY SOURCE CODE," as well as any materials that contain or disclose Intel Source Code Material.

I state under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on _____, 20 . _____
Signature